

Internal Revenue Service

Number: **200919022**
Release Date: 5/8/2009

Index Number: 115.00-00

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]
Person To Contact:
 , ID No.
Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:EO2
PLR-139858-08
Date:
December 01, 2008

Legend

Fund =

State =

University =

Dear :

This is in response to a letter requesting a ruling that the income of Fund is excludable from gross income under section 115(1) of the Internal Revenue Code (Code).

FACTS

University represents that it is a political subdivision of State. University adopted a trust agreement (Trust Agreement) creating Fund in order to provide eligible retirees and former employees of University and their dependents and survivors with health care and other retiree benefits in accordance with the terms of the University's underlying program of retiree medical benefits, life insurance, dependent life insurance, accidental death and dismemberment insurance, dental benefits, long term care insurance long term disability benefits and vision benefits (Plans or other post

employment benefits.) Fund became solely responsible for such benefits even though, pursuant to the Trust Agreement, University is not obligated to provide, nor does it guarantee, the other post employment benefits. University serves as Fund's initial sole trustee.

Fund provides retiree health benefits under the Medical Benefits Plan (Medical Plan). According to the information provided, Medical Plan is self-insured. University represents that retiree health benefits are not paid for by pre-tax salary reduction. University also represents that in administering Medical Plan, it will make reasonable efforts to identify individuals who do not qualify as a spouse or dependent (under section 152 of the Code). The fair market value of coverage under Medical Plan for such individuals will be included in the gross income of participants.

A trustee of Fund may resign by giving at least 30 days' notice to University. University can remove any trustee at any time by notifying that trustee of its removal. In the event of the removal, resignation, death, incapacity, or unwillingness to serve of any trustee, University shall designate a successor trustee.

No private interests participate in, or benefit from, the operation of Fund other than for the payment of reasonable costs as providers of goods and services. Fund assets include all contributions received by Fund on behalf of any University employees, including their dependents or survivors, or retirees, as well as the net proceeds of employee and Plans' participant contributions, together with the income and earnings from such contributions. The assets are only available to pay post-employment health care and welfare benefits of the employees of University and their dependents and survivors. The trustee may invest Fund assets by diversifying the investments of Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so and may appoint an investment manager to invest all or any of the assets of Fund.

Fund's assets are held in trust for the exclusive purpose of providing post-employment health care and welfare benefits to the employees of University, their dependents and survivors, and defraying the reasonable expenses associated with providing these benefits, and cannot be used for or diverted to any other purpose. No private interests participate in or benefit from the operation of Fund other than for reasonable payment as providers of goods or services. University has the right to alter, amend or terminate the Trust Agreement without the consent of trustee or any other person. No amendment or termination/dissolution of the Trust Agreement by University shall divert the corpus or income of Fund to a purpose other than providing post-employment health care and welfare benefits. Upon satisfaction of all obligations to provide benefits under the Trust Agreement any remaining assets will be distributed to University.

Section 115(1) of the Code provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision of a state.

Under Rev. Rul. 77-261, 1977-2 C.B. 45, the income from an investment fund, established under a written declaration of trust by a state for the temporary investment of cash balances of the state and its political subdivisions, was excludable from gross income for federal income tax purposes under section 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Service determined that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under section 115 of the Code. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

Fund provides insured health and welfare benefits to eligible retired University employees and their dependents or survivors. Providing health and welfare benefits to current and former employees constitutes the performance of an essential government function. Based upon Rev. Rul. 90-74 and Rev. Rul. 77-261, Fund performs an essential governmental function within the meaning of section 115(1) of the Code.

The income of Fund accrues to the benefit of University. Fund's assets will be used only for administrative expenses and expenditures in providing health and welfare benefits to eligible participants. No private interests participate in or benefit from the operation of Fund. Any distribution of remaining funds in Fund to participating employees or retirees upon the dissolution of Fund satisfies an obligation University has assumed with respect to providing health and welfare benefits to University employees. The benefit to the participating employees and retirees is incidental to the public benefit. See Rev. Rul. 90-74.

RULING

Based on the information and representations submitted by the taxpayer, we hold that the income of Fund is derived from the exercise of an essential governmental function and will accrue to University, a political subdivision of State. Accordingly, Fund's income is excludable from gross income under section 115(1) of the Code.

No opinion is expressed or implied concerning the Federal tax consequences of Fund under any provision of the Code other than those specifically cited herein. In particular, no representation is made regarding the Federal tax consequences of contributions to or payments from Medical Plan including (but not limited to) whether contributions to Medical Plan are excludable from the gross income of employees, former employees or retirees under section 106 of the Code and whether payments from Medical Plan are excludable from the gross income of employees, former employees or retirees under sections 104 or 105 of the Code.

Section 3.01(9) of Rev. Proc. 2007-3, 2007-1 I.R.B.108, provides that the Service will not issue a ruling concerning whether a self-insured medical reimbursement plan satisfies the requirements of section 105(h) of the Code for a plan year. Accordingly, no opinion is expressed concerning whether Medical Plan satisfies the nondiscrimination requirements of section 105(h) of the Code and section 1.105-11 of the regulations.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Sylvia F. Hunt
Assistant Chief
Exempt Organizations,
Branch 2
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)